

### **CBDT Issue Clarification Regarding Taxability of Dividend Declared and Paid by Foreign Company:**

The Central Board of Direct Taxes ('CBDT') has recently issued a Circular dated March 26, 2015 via circular No. 04/2015 regarding taxability of dividend declared and paid by foreign company on its shares, deriving its value substantially from assets situated in India, would not be treated as income accruing or arising in India and thus not taxable in India.

The legal background of taxability provision and effect of this circular is detailed hereunder:

1. Section 9 of the Income-tax Act provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.
2. The Finance Act, 2012 inserted Explanation 5 to clause (i) of sub-section (1) of section 9 and said that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India".
3. A number of representations have been received by the Board stating that the purpose of introduction of Explanation 5 was to clarify the legislative intent regarding the taxation of income accruing or arising through transfer of a capital asset situate in India.
4. It has been pointed out that such an extended application of the provisions of the Explanation may result in taxation of dividend income declared by a foreign company outside India. This may cause unintended double taxation and would be contrary to the generally accepted principles of source rule as well as the object and purpose of the amendment made by the Finance Act 2012.
5. Therefore, there is a need to provide clarificatory retrospective amendment to restate the legislative intent in respect of scope and applicability of section 9 and 195 and also to make other clarificatory amendments for providing certainty in law."
6. It is therefore CBDT clarified that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of Explanation 5 to section 9 ( I ) (i) of the Act

1 April 2015

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## **Amendment in Securities and Exchange Board of India (issue and listing of debt securities) Regulations, 2015**

On 24TH March 2015 Security and Exchange Board of India 'SEBI' has issued amendment in SEBI (Issue and Listing of Debt Securities) Regulation, 2015. Two Sub regulation 17A and 20 A has been inserted with regard to recalling or redemption of debt securities before maturity and Consolidation and re-issuance of Debt Securities respectively. The amendments are summarized below:

As per sub regulation 17A An issuer making public issue of debt securities may recall such securities prior to maturity date at his option (call) or provide such right of redemption prior to maturity date (put) to all the investors or only to retail investors, at their option, subject to various conditions, some of which are mentioned below :

- a. The issuer or investor may exercise such right with respect to all the debt securities issued or held by them respectively or with respect to a part of the securities so issued or held ;
- b. No such right shall be exercisable before expiry of twenty four months from the date of issue of such debt securities;
- c. Issuer shall send notice to all the eligible holders of such debt securities at least twenty one days before the date from which such right is exercisable;
- d. Issuer shall pay the redemption proceeds to the investors along with the interest due to the investors within fifteen days from the last day within which such right can be exercised;
- e. Issuer shall pay interest at the rate of fifteen per cent. per annum for the period of delay, if any,
- f. After the completion of the exercise of such right, the issuer shall submit a detailed report to the stock exchange for public dissemination regarding the debt securities redeemed during the exercise period and details of redemption thereof.

As per sub regulation 20 A an issuer may carry out consolidation and re-issuance of its debt securities, subject to the fulfillment of the following conditions:

- a. there is such an enabling provision in its articles under which it has been incorporated;
- b. the issue is through private placement;
- c. the issuer has obtained fresh credit rating for each re-issuance from at least one credit rating agency registered with the Board and is disclosed;
- d. such ratings shall be revalidated on a periodic basis and the change, if any, shall be disclosed;
- e. appropriate disclosures are made with regard to consolidation and reissuance in the Term Sheet."

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